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To Whom it May Concern

The NZRFG appreciates the opportunity to submit on the “RBI Non-Discrimination Consultation – March 2011” (the **Consultation**), which outlines Vodafone’s proposal for its RBI services to comply with the non-discrimination requirements.

We support both the open access and non-discrimination principles that are cornerstones of Part 4AA of the Telecommunications (TSO, Broadband and Other Measure) Amendment Bill (the **Bill**) and the RBI and UFB constructs.

Non-discrimination is defined in all three as:

*“**Non-discrimination**, in relation to the supply of a relevant service, means that the service provider must not treat access seekers differently, except to the extent that a particular difference in treatment is objectively justifiable and does not harm competition in any telecommunications market” (clause 156AB of the Bill)*

As far as we can tell, this generic non-discrimination obligation applies equally to LFC and RBI service providers. The undertakings provided to the Minister by each service provider will need to be broadly consistent with, as well as outline the specific detail of how it will commit to comply with, this broad definition of non-discrimination.

Vodafone’s proposal to meet this non-discrimination obligation is to commit to sell wholesale RBI services to non-Vodafone access seekers on an agreed retail minus basis. Vodafone has also said that it will not self-consume this wholesale service itself. Accordingly, wholesale access seekers will be treated differently to Vodafone itself.

This different treatment is fine so long as Vodafone can show that it is:

- a) objectively justifiable; and
- b) does not harm competition.

While the retail minus approach may arguably be objectively justifiable in order to facilitate Vodafone’s RBI investment, it is less clear as to whether the proposal will harm competition without greater transparency over the actual retail margin Vodafone will make on its own mobile services offered over RBI infrastructure.

The NZRFG's primary concern under this consultation is that both RBI and LFC service providers are treated equivalently with respect to non-discrimination, including with regards to what is 'objectively justifiable' and what 'does not harm competition'. We accept that the RBI and UFB non-discrimination frameworks are different given the different business and competition drivers that exists in rural and urban areas, respectively, but we contend that non-discrimination should be enforced in an even handed manner across LFCs and RBI service providers, particularly where both initiatives are partially government funded.

Vodafone's retail minus proposal essentially sets a precedent in the market for the types of commercial practices that are objectively justifiable and do not harm competition. We would expect that this proposal and the level of evidence required to demonstrate compliance sets the benchmark by which LFCs' non-discrimination obligations are also assessed.

I would be happy to discuss these concerns with you further.

Kind Regards

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